

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4591 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

=====

1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

MOHD. YUSUF @ BABA MOHD. AHMEDKHAN PATHAN

Versus

STATE OF GUJARAT

Appearance:

MR HR PRAJAPATI for Petitioner

MR. H.H. PATEL, AGP, for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 15/12/1999

ORAL JUDGEMENT

The petitioner is detained under the provisions of the Gujarat Prevention of Anti Social Activities Act, 1985 (hereinafter referred to as 'the PASA Act') by virtue of the order passed by the Commissioner of Police, Ahmedabad City, Ahmedabad, on 17.3.1999 in exercise of power under Section 3(1) of the PASA Act.

2. In the grounds of detention, the detaining authority took into consideration prohibition cases

registered against the detenu. The detaining authority also took into consideration statements of two anonymous witnesses whose identity has not been disclosed in exercise of power under Section 9(2) of the PASA Act. The authority exercised this power after being subjectively satisfied about the correctness and genuineness of the facts stated in the statements and the fear expressed by the witnesses qua the detenu. After considering the alternative less drastic remedy, the authority concluded that in order to immediately prevent the petitioner from his bootlegging activities which is detrimental to public order, it is necessary to resort to detention under the PASA Act.

3. The petitioner by this petition under Article 226 of the Constitution of India, challenges the order of detention on various grounds. The first and foremost ground is that the statements of the witnesses were recorded on 16.3.1999. They were verified on 17.3.1999 and the order was passed on that very day. The detaining authority had no time to consider the need for exercise of power under Section 9(2) of the PASA Act. The other ground raised in this petition is that two representations dated 18.6.1999 and 27.7.1999 have not been replied by the authority. The last ground is that the case relates to foreign liquor. The detaining authority has not recorded its subjective satisfaction about the petitioner's dealing in foreign liquor being detrimental to the public health and public order and therefore the order could not have been passed.

4. Mr. Prajapati, learned advocate appearing for the petitioner has restricted his arguments to the above grounds. He submitted that in view of the decision in the case of Kalidas Chandubhai Kahar Vs. State of Gujarat & Ors. reported in 1993(2) G.L.R. 1659 the order passed by the detaining authority is without application of mind. As regards public order, he placed reliance on the decision of the apex court in the case of Piyush Kantilal Vs. Commissioner of Police, Ahmedabad City AIR 1989 SC 491 and submitted that the petition may be allowed.

5. Respondent No. 2 has filed affidavit in reply wherein it has been generally contended that the averments made in the petition are not correct and that the order of detention was passed after being subjectively satisfied about the need thereof, after personally verifying the documents produced before it.

6. Mr. H.H. Patel, learned A.G.P. appearing for

the respondents submitted that he does not dispute the fact that on 16.3.1999 the statements were recorded, on 17.3.1999 the statements were verified by the detaining authority and the order was passed on that very day. He however submitted that at times it becomes necessary to pass such orders quickly in order to immediately prevent the nefarious activities of the detenu. Mr. Patel submitted that the first representation dated 18.6.1999 was received by the Government on 19.6.1999 and was rejected on 21.6.1999 and communicated on that very day. As regards, the second representation dated 27.7.1999 he submitted that it was received on 28.7.1999. It was sent to the Home Department by the Minister on 29.7.1999 and was rejected by the Home Department on 2.8.1999. He submitted that at the same time the Home Department directed the detaining authority to supply the documents demanded in the representation and the detaining authority on 5.11.1999 rejected the representation and did not supply the documents demanded as the same were not available because in case of foreign liquor the contraband seized is not sent to the F.S.L. for chemical analysis.

7. Considering the rival side contentions, it appears that the petition deserves to be allowed on the first ground alone. Undisputedly, the statements were recorded on 16.3.1999 and were verified by the detaining authority on 17.3.1999. The authority passed the order of detention on that very day. While passing the order, the detaining authority exercised power under Section 9(2) of the PASA Act. It recorded satisfaction that the facts stated by the witnesses in the statements were correct and that they had genuine apprehension from the petitioner detenu qua their person and property. It may be noted that for arriving at the subjective satisfaction, the detaining authority must have some material to arrive at such satisfaction. The authority is required to undertake certain exercise, as the exercise of the powers has a direct bearing on the right of the detenu of making an effective representation contemplated under Article 22(5) of the Constitution of India. The authority is therefore required to weigh pros and cons of the case inter se between the public interest on one hand and the interest/right of the petitioner detenu of making effective representation on the other hand and then come to the conclusion whether the powers are required to be exercised under Section 9(2) of the PASA Act or not. This exercise would require some time and in the instant case no time is consumed by the detaining authority in passing the order after verifying the same. This aspect has not been dealt with by the

detaining authority in the affidavit in reply. No details as to when the proposal was received, what material was considered and at what point of time. These aspects are not dealt with by the detaining authority in the affidavit in reply.

8. In this view of the matter, keeping in mind the decision in the case of Kalidas C. Kahar (supra) the order of detention stands vitiated for the reasons stated in foregoing paragraphs. It infringed the right of the detenu of making an effective representation. The petition therefore deserves to be allowed and the same is allowed.

9. Mr. Prajapati does not press for verdict on the other grounds to assail the order of detention.

The petition is allowed. The order of detention dated 17.3.1999 passed by the Police Commissioner, Ahmedabad City, in respect of detenu Mohd. Yusuf @ Baba Mohd. Ahmedkhan Pathan of Rakhial, Ahmedabad, is quashed and set aside. The detenu be set at liberty forthwith if not required in any other case. Rule is made absolute. No order as to costs.

(A.L. DAVE, J)

[pkn]